



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kenya Power and Lighting Company Limited v Muchilwa (Civil Appeal  
E036 of 2024) [2025] KEHC 13728 (KLR) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13728 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CIVIL APPEAL E036 OF 2024  
JN KAMAU, J  
SEPTEMBER 30, 2025**

**BETWEEN**

**KENYA POWER AND LIGHTING COMPANY LIMITED ..... APPELLANT**

**AND**

**CORNELIUS SYLVANO MUCHILWA ..... RESPONDENT**

*(Being an appeal from the Ruling of Hon J. A. Agonda (PM) delivered at Vihiga in  
the Principal Magistrate's Court Civil Case No E139 of 2021 on 2nd August 2024)*

**JUDGMENT**

**Introduction**

1. In her decision of 2<sup>nd</sup> August 2024, the Learned Trial Magistrate, Hon J. A. Agonda, Principal Magistrate, dismissed the Appellant's Preliminary Objection dated 16<sup>th</sup> January 2024 with no orders as to costs.
2. Being aggrieved by the said decision, on 15<sup>th</sup> August 2024, the Appellant herein filed a Memorandum of Appeal dated 14<sup>th</sup> August 2024. He relied on seventeen (17) Grounds of Appeal.
3. His Written Submissions were dated and filed on 20<sup>th</sup> December 2024. The Respondent did not file any Written Submissions. The Judgment herein is, therefore, based on the said Written Submissions which parties relied upon in their entirety.

**Legal Analysis**

4. Having looked at the Grounds of Appeal and the Appellant's Written Submissions, it appeared to this court that all the grounds of appeal were related and the issue that had been placed before it for determination was whether or not the Trial Court had the requisite jurisdiction to handle the matter herein in the first instance.



5. The Appellant submitted that the Respondent's claim at the Trial Court was that in October 2015, it disconnected his postpaid metre number 109264 and replaced it with pre-paid metre number 1424333828. The Respondent had asserted that it illegally disconnected the said metre on 21<sup>st</sup> June 2019 it illegally disconnected the said metre, thus, he suffered loss and damage as he had to hire a generator at Kshs 19,500 = and engage advocates to write a demand letter at a cost of Kshs 5,000 =.
6. It pointed out that the suit proceeded as a formal proof as it was deemed by the Trial Court that it had been duly served with summons to enter appearance and had failed to enter appearance. As such, Judgment was entered in favour of the Respondent. It argued that no proper service of Summons and the Plaint was effected on it and that the Trial Court was misled into believing that proper service had been done.
7. It asserted that it was not aware of the said suit until October 2023 when it filed the application dated 31<sup>st</sup> October 2023 which sought orders to set aside the Judgment dated 21<sup>st</sup> July 2022 and leave for it to be allowed to defend the suit. It added that the same was allowed by the Trial Court on 18<sup>th</sup> April 2024 and the court proceeded to give directions on its Preliminary objection dated 16<sup>th</sup> January 2024. On 2<sup>nd</sup> August 2024, the Trial Court delivered its Ruling dismissing the said Preliminary Objection.
8. It further submitted that the Trial Court erred in failing to consider and find that the subject matter of the suit was within the realm and province of the *akn ke act 2019 1 Energy Act, 2019*. It asserted that a review of the claims by the Respondent in his Plaint, revealed the fact that the crux of the matter was about disconnection of electricity as set out in the *akn ke act 2019 1 Energy Act, 2019*.
9. It placed reliance on the case of *Mount Kenya Safari Club Limited vs Kenya Power & Lighting Company*[2021]eKLR where it was held that the plaintiff should have first exhausted the dispute resolution mechanisms provided for in the *akn ke act 2019 1 Energy Act, 2015* before going to court as the court did not have the jurisdiction to deal with the dispute before at that point.
10. It invoked the Preamble, Sections 2, 3(1), 11(a), 117, 154 and 158 of the *akn ke act 2019 1 Energy Act, 2019* and submitted that the alleged disconnection was within its mandate as per Section 158 of the *akn ke act 2019 1 Energy Act, 2019* in accordance with the license granted by the Energy and Petroleum Regulatory Authority under Section 11(a) of the Act. It argued, therefore, that as such, if there was any alleged violations in that regard, then the applicable law was the *akn ke act 2019 1 Energy Act, 2019*.
11. It contended that Section 9 and 25 of the *akn ke act 2019 1 Energy Act, 2019* established the Energy & Petroleum Regulatory Authority and the Energy & Petroleum Tribunal respectively. It added that the said Energy & Petroleum Regulatory Authority had a statutory mandate to investigate and determine complaints or disputes between parties over any matter relating to licenses and license conditions under the *akn ke act 2019 1 Energy Act, 2019* and the Energy (Complaints and Disputes Resolution) Regulations, 2012.
12. It further invoked Regulations 2 and 4 of the Energy (Complaints and Disputes Resolution) Regulations, 2012 and placed reliance on the cases of *Kenya Power & Lighting Co Ltd vs Geoffrey Orina Oganga*[2020]eKLR and *Kenya Power & Lighting Co Ltd vs Samuel Mandere Ogeto*[2018] eKLR where the common thread was that the Energy & Petroleum Regulatory Authority had been termed as the first port of call for complaints and disputes under the purview of Regulations 4(a) of the Energy (Complaints and Disputes Resolution) Regulations, 2012. It was emphatic that such disputes included disputes relating to billing, disconnection and reconnections.
13. It faulted the Trial Court for not giving any considerations whatsoever to the subject matter despite the same being clearly elaborated in its Written Submissions. It added that it also failed to take cognisance



of Section 3 of the *akn ke act 2019 1 Energy Act*, 2019 which provided that whenever there was a conflict between the *akn ke act 2019 1 Energy Act*, 2019 and any other Act, then the *akn ke act 2019 1 Energy Act*, 2019 would prevail. To buttress its point, it relied on the case of *Abidha Nicholus vs Attorney General & 7 Others; National Environment Complaints Committee (NECC) & 5 Others (Interested Parties)* [2021]eKLR where it was held that the import of Section 3 was that the *akn ke act 2019 1 Energy Act*, 2019 prevailed over any other Act of Parliament or law but definitely not over *akn ke act 2010 constitution the Constitution* of Kenya, 2010.

14. It was emphatic that the present matter was squarely a disconnection reconnection of electricity complaint as set out in the *akn ke act 2019 1 Energy Act*, 2019 and the Energy (Complaints and Disputes Resolution) Regulations, 2012 and, therefore, the Trial Court erred by determining otherwise.
15. It further cited Articles 50(1), 159(2)(c) and 169(1)(d) and (2) of *akn ke act 2010 constitution the Constitution* of Kenya, Section 9(2) and (3) of the *akn ke act 2015 4 Fair Administrative Action Act*, 2015 and Sections 25 and 36 of the *akn ke act 2019 1 Energy Act*, 2019 and argued that the Trial Court failed to give meaning to the said provisions of law. It added that courts should remain the fora of last resort as they are at the apex of the system of dispute resolution and that it would be useless and futile if the tribunals or statutory bodies created by statutes were curtailed from discharging their statutory functions with regard to dispute resolution.
16. It relied on the case of *Republic vs Energy Regulatory Commission & 2 Others*[2018]eKLR where it was held that Article 159 of *akn ke act 2010 constitution the Constitution* of Kenya imposed on the judiciary the obligation to promote alternative dispute resolution hence the utilisation of tribunals such as the Energy Tribunal. It asserted that the nature of the present complaint revolved around disconnection and reconnection of electricity and that the Respondent had to first exhaust the internal dispute resolution mechanism established by the *akn ke act 2019 1 Energy Act*, 2019. In this regard, it relied on the case of *Republic vs Council of Legal Education; Ex Parte Desmond Tutu Owuoth* [2019]eKLR where it was held that it was imperative that where a dispute resolution mechanism existed outside courts, the same had to be exhausted before the jurisdiction of the court could be invoked.
17. It was categorical that in the case of *Nicholus vs Attorney General & 14 Others; National Environment Complaints Committee (NECC) & 5 Others (Interested Parties)*[2023] KECA 34 (KLR), the Court of Appeal settled the issue of dispute resolution mechanism in the energy section and, therefore, it was clear that the Trial Court had no jurisdiction to handle this matter as it was within the scope of the *akn ke act 2019 1 Energy Act*, 2019. It added that the Trial Court erred in delivering a Ruling which was contrary to Sections 25 and 36 of the *akn ke act 2019 1 Energy Act*, 2019 and the Court of Appeal ratio decidendi in *Nicholus vs Attorney General & 14 Others* (Supra).
18. It was categorical that it was settled principle that jurisdiction was everything and that without it, a court could not purport to take any action in a matter. In this regard, it relied on several cases that affirmed the centrality of jurisdiction in judicial proceedings, among them, the case of *Phoenix of E.A Assurance Company Ltd vs S.M Thiga t a Newspaper Service* [2019]eKLR where it was held that a suit filed devoid of jurisdiction was dead on arrival and could not be remedied.
19. It further asserted that the presence of the Energy & Petroleum Tribunal in multiple Judiciary websites demonstrated the acknowledgement of the Energy & Petroleum Tribunal as recognised dispute resolution mechanism within the Judiciary of Kenya hierarchy. It further cited Section 26(1) and (2) of the *akn ke act 2019 1 Energy Act*, 2019 and pointed out that the Chairperson and the Vice Chairperson of the Energy and Petroleum Tribunal had the qualifications of a Judge of the High Court



and with experience in energy and petroleum matters hence the Tribunal was more suitable in resolving complaints and disputes emanating from the energy sector.

20. It was emphatic that the Trial Court ought to have downed its tool and directed that the Respondent avail himself of the dispute resolution mechanism provided under the *akn ke act 2019 1 Energy Act*, 2019 and the Energy (Complaints and Dispute Resolution) Regulations. It further cited the cases of *Thomas Schering vs Nereah Michael Said & 3 Others*[2019]eKLR where it was held that from the provision of the *akn ke act 2019 1 Energy Act*, it was apparent that Parliament in its wisdom wanted such disputes to be taken away from the mainstream courts to be handled by a specialised body known as the Energy Regulatory Commission and *Albert Chaurembo Mumbo & 7 Others vs Maurice Munyao & 148 Others*[2019]eKLR where it was held that even where superior courts had jurisdiction to determine profound questions of law; the first opportunity had to be given to relevant persons, bodies, tribunals or any other quasi-judicial authorities and organs to deal with the dispute as provided for in the relevant parent statute.
21. It argued that the Trial Court failed to consider its submissions and ignored numerous binding decisions that it had cited thus breached the principle of *stare decisis*. In this regard, it relied on the case of *Justice Jeanne W. Gacheche & 5 Others vs Judges and Magistrates Vetting Board & 2 Others* [2015]eKLR where it was held that good order and proper administration of justice as well as the common law doctrine of *stare decisis* dictate that lower courts adhere to the decisions of courts of superior hierarchy where legally acceptable circumstances exist.
22. It blamed the Trial Court for basing its dismissal on the fact that it had filed its preliminary objection after Judgment had been delivered and thus failed to determine the said preliminary objection on the relevant points of law. It added that the Trial Court also disregarded the fact that it had set aside the said Judgment, thus, arrived at an erroneous decision.
23. It further asserted that the jurisprudence was that if orders were made by a court which lacked the jurisdiction to handle the matter before it, such orders were void *ab initio* as was held in the cases of *Nguruman Limited vs Shompole Group Ranch & Another*[2014]eKLR and *Macfoy vs United Africa Co Ltd*[1961] 3 All ER 1169 at 1172. It was its contention that the Trial Court's orders, therefore, were null and void and should be declared as such.
24. It further relied on the case of *Party of Independent Candidate of Kenya vs Mutula Kilonzo* (eKLR citation was not given) where it was held that the underlying principle in awarding costs were that the award of costs was a matter of discretion of the Judge to be exercised upon grounds on which a reasonable man could have come to the conclusion arrived at and that the general rule was that costs were awarded to the successful party, unless there was good ground for not doing so. It urged the court to allow the appeal herein with costs.
25. Section 3(1) of the *akn ke act 2019 1 Energy Act* Cap 314 (Laws of Kenya) provide as follows:-

“If there is a conflict between this Act and any other Act, this Act shall prevail on the following matters—

  - (a) the importation, exportation, generation, transmission, distribution, supply or use of electrical energy...”
26. The Energy and Petroleum Regulatory Authority was established under Section 9 of the *akn ke act 2019 1 Energy Act* while Section 10 thereof provided for its functions as follows:-

“The functions of the Authority shall be to—



- (a) regulate—
  - (i) generation, importation, exportation, transmission, distribution, supply and use of electrical energy with the exception of licensing of nuclear facilities...”

27. Section 25 of the *Kenya Energy Act 2019* further provides as follows:-

“There is established the Energy and Petroleum Tribunal, hereinafter referred to as “the Tribunal”, for the purpose of hearing and determining disputes and appeals in accordance with this Act or any other written law.”

28. Section 36 of the said *Kenya Energy Act 2019* provides for the jurisdiction of the aforesaid Tribunal. It states as follows:-

“

“(1) The Tribunal shall have jurisdiction to hear and determine all matters referred to it, relating to the energy and petroleum sector arising under this Act or any other Act.

(2) The jurisdiction of the Tribunal shall not include the trial of any criminal offence.

(3) The Tribunal shall have original civil jurisdiction on any dispute between a licensee and a third party or between licensees.

(4) The Tribunal shall have appellate jurisdiction over the decisions of the Authority and any licensing authority and in exercise of its functions may refer any matter back to the Authority or any licensing authority for re-consideration.

(5) The Tribunal shall have power to grant equitable reliefs including but not limited to injunctions, penalties, damages, specific performance.

**(6)**

The Tribunal shall hear and determine matters referred to it expeditiously.”

29. Section 117 of the *Kenya Energy Act 2019* further stipulates that:-

“A person who wishes to carry out the generation, exportation, importation, transmission, distribution and retail supply of electricity must apply for a licence as the case may be to the Authority in accordance with the provisions of this Act.”

30. In addition, Section 154 of the *Kenya Energy Act 2019* states that:-

“(1) (1) The amount of electrical energy supplied to the consumer or the number of hours during which the supply is given, or the maximum demand taken by the consumer, or any other quantity or time connected with the supply shall be ascertained by metres of a type approved by the Kenya Bureau of Standards, or determined in a manner agreed upon by the retailer and the consumer.



- (2) The retailer shall supply and fix metres upon the premises of the consumer and connect the supply system therewith:

Provided that the licensee may agree to the value of the supply to any consumer being ascertained by a private metre belonging to the consumer.”

31. Several terms have been defined in Section 2 of the Energy, Act as follows:-

“consumer” means any person supplied or entitled to be supplied with electrical energy or petroleum.

“distribution” means the ownership, operation, management or control of facilities for the movement or delivery of energy to enable supply to consumers;

“distribution of electricity” means the conveyance of electricity by a distribution licensee through its distribution system;

“distribution system” means a system, works, plant, equipment or service for the delivery or supply of energy directly to the consumers, but does not include a power plant or transmission line;

“electrical energy” means energy involving the use of electric current which may be produced either by mechanical, chemical, photovoltaic or any other means;

“licence” means any document or instrument in writing granted under this Act, to any person or authorizing the importation, exportation, generation, transmission, distribution and supply of electrical energy or the exploration and production of geothermal energy, in the manner described in such document or instrument;

“licensee” means a holder of any licence issued under this Act;

“supply” in relation to electricity, means the sale of electricity to a licensee or consumer;”

32. In his Complaint dated 16<sup>th</sup> June 2021 and filed on 20<sup>th</sup> August 2021, the Respondent claimed that sometime in October 2015, the Appellant had disconnected his postpaid metre number 109264 and replaced it with pre-paid metre number 1424333828 and that on 21<sup>st</sup> June 2019, it had illegally disconnected the aforesaid pre-paid metre. It was his averment that due to the said disconnections of electricity, he suffered loss and damage.
33. It was evident that both the Appellant and the Respondent herein were a supplier and a consumer within the provisions of the *kenya electricity act 2019*. It, therefore, followed that having been aggrieved by the Respondent’s actions, the Respondent ought to have first sought redress through the Authority and the Tribunal under the said *kenya electricity act 2019*.
34. This court took the firm view that where there was a prescribed resolution mechanism, parties were required to first exhaust it before approaching the court. This was known as the doctrine of exhaustion.
35. In the case of *William Odhiambo Ramogi & 3 others vs Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties)* [2020] eKLR, it was held that the question of exhaustion of administrative remedies arose when a litigant, aggrieved by an agency’s action, sought redress from a court of law on an action without pursuing available remedies before the agency itself.



36. The doctrine of exhaustion ensured that matters could not be considered in court until an aggrieved party had first exhausted the dispute resolution mechanisms that were outside the court system to protect his or her interests, where he or she had consented to such dispute resolution mechanisms.
37. To determine the dispute at a first instance as the Trial Court had done was tantamount to overreaching itself and delving in matters that were outside its scope as far as the *akn ke act 2019 1 Energy Act* was concerned.
38. A keen reading of the Trial Court's Ruling indicated that it did not determine the Appellant's Preliminary Objection on its merit but mainly dismissed the same on account that the Appellant had filed the same two (2) years after judgment had already been delivered. It was immaterial that there was an existing judgment as it has been held time and again that court's need to down their tools when it comes to their attention that they have no requisite jurisdiction to handle a matter. Indeed, in the case of Owners of Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Limited (1989), it was held that jurisdiction was everything and without it a court had no power to take one more step. Jurisdiction was conferred by statute and was not assumed without any legal basis.
39. As the finding and holding of this court was that the Respondent ought to have exhausted all other available remedies before invoking the jurisdiction of court, the Trial Court erred in law and fact in having dismissed the Appellant's Preliminary Objection dated 16<sup>th</sup> January 2024.

## **DISPOSITION**

40. For the foregoing reasons, the upshot of this court's decision was that the Appellant's Appeal lodged on 15<sup>th</sup> August 2024 was merited and the same be and is hereby allowed. The effect of this order is that the Ruling delivered on 2<sup>nd</sup> August 2024 and all consequential orders be and are hereby set aside and substituted by an order that the Appellant's Preliminary Objection dated 16<sup>th</sup> January 2024 be and is hereby upheld.
41. It is hereby directed that each party will bear its own costs of this Appeal.
42. It is so ordered.

**DATED AND DELIVERED AT VIHIGA THIS 30<sup>TH</sup> DAY OF SEPTEMBER 2025**

**J. KAMAU**

**JUDGE**

